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and certain subsidiaries

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF ARIZONA

In re:)	In Proceedings Under Chapter 11
)	
BAPTIST FOUNDATION OF ARIZONA, an)	Case Nos. 99-13275-ECF-GBN through 99-
Arizona nonprofit 501(c)(3) corporation, and)	13364-ECF-GBN
related proceedings,)	
)	All Cases Jointly Administered Under Case
Debtors.)	No. 99-13275-ECF-GBN
)	DEBTORS' OBJECTION TO CLAIM OF
)	GENERAL ELECTRIC CAPITAL
)	CORPORATION
)	
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Pursuant to Rule 3007 of the Bankruptcy Rules of Procedure and Section 502(a) of the Bankruptcy Code, Debtor and Debtor-in-Possession, Baptist Foundation of Arizona, Inc. (and certain of its subsidiaries, who also may be co-debtors, as applicable; collectively “**BFA**”), submits the following objection to the proof of claim filed by General Electric Capital Corporation (“**GE Capital**”). In support of this objection, BFA offers the following memorandum of points and authorities.

MEMORANDUM IN SUPPORT OF OBJECTION

I. FACTS

On March 30, 2000, GE Capital submitted a proof of claim alleging a secured claim in the amount of \$19,835.50 “plus 10% interest per annum” related to BFA’s lease of office equipment (color copiers) from American Business Credit Corporation (a Danka Company) (“ABCC”). Certain invoices attached to GE Capital’s Proof of Claim show that the office equipment was sold by ABCC to either GE Capital or Lease America Corporation (both of which are located at the same address and share the same contact person) and thereafter leased and delivered to BFA.

With its proof of claim, GE Capital did not submit any specific detail as to how it arrived at the calculation of its claim. Instead, it attached what appears to be its entire business file related to BFA with no distinction or designation regarding what documents support (or even relate to) its claim.

BFA admits that it did lease office equipment from ABCC/Danka under two separate rental programs, but that it no longer does so. Under the first program, which began in June 1994, eight (8) copiers were leased for a term of sixty (60) months. By the terms of the lease program, the sixty-month term expired in June 1999. In March 1999, three months before the expiration of the term of this rental program, BFA orally notified ABCC/Danka that it would not be renewing its lease. On April 9, 1999 and April 23, 1999, more than thirty (30) days from the scheduled termination date, BFA sent written notice of its intent not to renew.

Under the second lease program, BFA leased another ten (10) copiers from ABCC/Danka. In August 1999, BFA sent notice to ABCC/Danka that it was terminating the second lease program pursuant to a lease buyout agreement. Despite numerous attempts by BFA

to contact ABCC/Danka regarding needed information on the buyout of BFA's lease on the second program, ANCC/Danka never fully responded with the needed information.

Since its termination of both lease programs in April 1999 and August 1999, respectively, BFA made all of the office equipment available to ABCC/Danka for pick up. Since that time, BFA has contacted ABCC/Danka repeatedly to request that ABCC/Danka pick up the 18 copier machines, but ABCC/Danka has yet to do so.

On March 30, 2000, BFA filed a motion to reject certain executory contracts and leases, which motion, among other things, sought to formally reject the two leases BFA had terminated with ABCC/Danka. The Court granted BFA's motion on April 19, 2000.

II. LAW AND BASIS FOR OBJECTION

Objections to claims are governed by 11 U.S.C. § 502(a), which provides that "[a] claim or interest, proof of which is filed under section 501 of this title, is deemed allowed, unless a party in interest, . . . objects." Section 502(b) provides that "[i]f such objection to a claim is made, the court, after notice and a hearing, shall determine the amount of such claim in lawful currency of the United States as of the date of the filing of the petition, and shall allow such claim in such amount."

Federal Rule of Bankruptcy Procedure 3001(f) provides that a proof of claim filed in accordance with the rules "shall constitute prima facie evidence of the validity and amount of the claim." The burden of proof is on the objecting party to produce evidence equivalent in probative value to that of the creditor to rebut the prima facie effect of the proof of claim. However, "the ultimate burden of persuasion is always on the claimant." In Re Holm, 931 F.2d 620, 623 (9th Cir. 1991) (citing 3 L. King, *Collier on Bankruptcy* § 502.02, at 502-22 (15th ed. 1991) (footnotes omitted)).

A properly supported objection to a claim initiates a contested matter under the Bankruptcy Rules of Procedure. See Fed. R. Bankr. P. 3007 (adv. comm. note).

BFA objects to the entire amount stated in GE Capital's proof of claim. BFA timely terminated its lease under the first leasing program and GE Capital (ABCC/Danka) has, in addition to making no efforts to reclaim the equipment made available to it, never followed up on exercising any rights to obtaining buyout payments from BFA. BFA further objects to the amount claimed on the ground that claimant has been under a duty to mitigate any claims for damages it might have incurred since the time BFA has made available to it all of the office equipment governed by the leasing programs.

III. CONCLUSION

For the above reasons, BFA respectfully requests that the Court (i) schedule an evidentiary hearing on the claim brought by GE Capital; (ii) require claimant to demonstrate its claim by a preponderance of the evidence; and (iii) disallow such claim to the extent merited by the applicable facts and law.

BFA further requests that this Court issue an Order requiring GE Capital (or ABCC/Danka) to retake physical possession the equipment that has been made available to it by BFA since at least August 1999, and further ordering that BFA shall not be held liable for any amount of depreciation or other damages GE Capital (or ABCC/Danka) might claim related to the time that has passed since the equipment has been made available to GE Capital (ABCC/Danka) by BFA for pick up.

RESPECTFULLY SUBMITTED this 7th day of November, 2000.

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